



08 JUN 2006

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| In re Application of | : | DECISION ON |
| Lynn McMullen et al | : | |
| Application No.: 10/519,231 | : | |
| International App. No.: PCT/CA03/00986 | : | |
| Int. Filing Date: 27 June 2003 | : | |
| Priority Date: 27 June 2002 | : | REQUEST UNDER |
| Attorney's Docket No.: C66010.1IS | : | |
| For: CONTROLLED SPOILAGE FOOD | : | |
| COMPOSITIONS | : | 37 CFR 1.497(d) |

This is a decision on applicants' "RESPONSE" filed on 14 March 2006, which is being treated as a request under 37 CFR 1.497(d) naming additional inventor, David C. Smith, in the executed declaration. The \$130.00 processing fee has been paid by check.

BACKGROUND

On 27 June 2003, applicants filed international application No. PCT/CA03/00986 and claiming a priority date of 27 June 2002.

On 27 December 2004, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No executed oath or declaration was filed at such time.

On 20 June 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date. The notice also indicated that the items set forth above must be submitted within two (2) months from date of this Notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 19 December 2005, applicants filed, inter alia, an executed declaration.

On 14 February 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916) indicating that the oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it: is not executed in accordance with either 37 CFR 1.66 or 37 CFR 1.68. In addition, it indicated that David C. Smith is not mentioned on the published application as an inventor. The Notification indicated

that applicants are required to complete the response within a time limit of One Month from the date of this Notification or within the time remaining in the response set forth in the Notification of Missing Requirements, whichever is later.

On 14 March 2006, applicants filed a request under 37 CFR 1.497(d) to add joint inventor David C. Smith in the executed declaration.

DISCUSSION

A submission under 37 CFR 1.497(d) must include:

- (1) a statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
- (2) the fee set forth in § 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see 37 CFR §3.73(b) of this chapter).

A review of the application file reveals that applicants have satisfied items (1) - (2) under 37 CFR 1.497(d) but not item (3).

With respect to item (1), the statement submitted 14 March 2006 by David C. Smith is sufficient because the statement states that the error in inventorship occurred without a deceptive intent.

With respect to item (2), the processing fee of \$130.00 has been paid by check.

With respect to item (3), there does not appear to be a written consent of the assignee, CANBIOCIN INC., which is listed as the applicant in the published international application PCT/CA2003/000986. Note MPEP 201.03.

Accordingly, the request does not meet the requirements under 37 CFR 1.497(d).

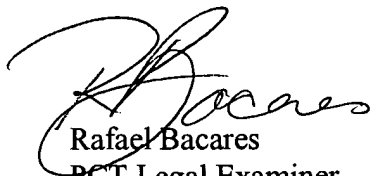
CONCLUSION

For the reasons above, the request under 37 CFR 1.497(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. The proper reply is either a proper request under 37 CFR 1.497(d) overcoming the above stated defects. The failure to provide the proper reply will result in Abandonment of the application. Any reconsideration

request should include a cover letter entitled "Renewed Request Under 37 CFR 1.497(d)". Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read 'R. Bacares', is positioned above the printed name.

Rafael Bacares

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